

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**PLATEAU TELECOMMUNICATIONS, INCORPORATED  
SECOND AMENDMENT TO PETITION FOR WAIVER AND MODIFICATION  
OF CERTAIN COMMISSION RULES REGARDING  
MOBILITY FUND PHASE I SUPPORT**

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## Summary

Plateau Telecommunications, Incorporated (“Plateau”) amends its pending Petition for waiver and modification of certain Mobility Fund Phase I (“MFI”) rules to: (1) withdraw the request for a brief extension of the three-year deadline for submitting drive test data for the census tracts associated with Study Area Codes (“SACs”) 498013 and 498014; (2) modify the deadline requested for submitting drive test data for the census tracts associated with SACs 498017 and 498019; and, (3) modify the relief requested in connection with the MFI projects in the census tracts associated with SACs 498016, 498018, and 498021 (the “Three Tracts”) to no longer request that Plateau be allowed to retain the first one-third of support already disbursed for the Three Tracts. Plateau hereby amends the Petition to request that the Commission allow Plateau to repay the support already disbursed for the Three Tracts by netting the repayment amount against the additional amount owed Plateau for the full support (up to the percentage of road miles covered) in the four census tracts in which Plateau fully completed construction of a 4G network covering at least 75% of the previously unserved road miles (the “Completed Tracts”). This will result in no additional disbursement of MFI support to Plateau, but rather with Plateau repaying some support.

In the Completed Tracts, the network continues to provide 4G coverage to the previously unserved road miles, and has been used to provide service for the five-year period following the award of support. This has benefited subscribers and roamers, including public safety users, in rural New Mexico and served the public interest. The public interest obligations have been satisfied fully in the Completed Tracts, and the time is ripe to grant the Petition, as amended.

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OF CERTAIN COMMISSION RULES REGARDING  
MOBILITY FUND PHASE I SUPPORT**

Plateau Telecommunications, Incorporated (“Plateau”), by its attorneys, and pursuant to section 1.3 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby further amends its Petition for Waiver and Modification of Certain Commission Rules Regarding Mobility Fund Phase I Support, as amended (the “Petition”),<sup>1</sup> provides an update on its Mobility Fund Phase I (“MFI”) projects, and requests that the Commission grant the Petition, as hereby amended. Specifically, as explained in greater detail below, Plateau further amends the Petition to: (1) withdraw the request for a brief extension of the three-year deadline for submitting drive test data for the census tracts associated with Study

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<sup>1</sup> Plateau Telecommunications, Inc. Petition for Waiver and Modification of Certain Commission Rules Regarding Mobility Fund Phase I Support, WC Docket No. 10-90, WT Docket No. 10-208 (filed Nov. 28, 2014) (“2014 Petition”), *amended*, Amendment of Plateau Telecommunications, Inc. Petition for Waiver and Modification of Certain Commission Rules Regarding Mobility Fund Phase I Support, WC Docket No. 10-90, WT Docket No. 10-208 (filed June 16, 2016) (“Waiver Amendment”). Plateau also filed supplements to the Petition, providing the Commission with updates on the status of construction of the MFI network with regard to certain census tracts for which Plateau was awarded MFI support. *See* Supplement to Plateau Telecommunications, Inc. Petition for Waiver and Modification of Certain Commission Rules Regarding Mobility Fund Phase I Support, WC Docket No. 10-90, WT Docket No. 10-208 (filed Feb. 25, 2015) (“Supplement”) and Further Supplement to Plateau Telecommunications, Inc. Petition for Waiver and Modification of Certain Commission Rules Regarding Mobility Fund Phase I Support, WC Docket No. 10-90, WT Docket No. 10-208 (filed March 29, 2016).

Area Codes (“SACs”) 498013 and 498014; (2) modify the deadline requested for submitting drive test data for the census tracts associated with SACs 498017 and 498019; and, (3) modify the relief requested in connection with the MFI projects in the census tracts associated with SACs 498016, 498018, and 498021, in which Plateau deployed a 4G network covering more than 50%, but less than the required 75%, of the previously unserved road miles (the “Three Tracts”). Plateau no longer request that it be allowed to retain the first one-third of support already disbursed for the Three Tracts. Instead, Plateau hereby amends the Petition to request that the Commission allow Plateau to repay the support already disbursed for the Three Tracts by netting the repayment amount against the additional amount owed Plateau for the full support (up to the percentage of road miles covered) in the four census tracts associated with SACs 498013, 498014, 498017, and 498019 in which Plateau constructed a 4G network covering at least 75% of the previously unserved road miles (the “Completed Tracts”). This will result in no additional disbursement of support from the Universal Service Administrative Company (“USAC”) to Plateau, but rather with Plateau making a payment to USAC. Plateau continues to request that the Commission waive or cancel the additional performance default payment with respect to the Three Tracts.

In the Completed Tracts, the network continues to provide 4G coverage to the previously unserved road miles, and has been used to provide service for the five-year period following the award of support. This has benefited subscribers and roamers, including public safety users, in rural New Mexico and served the public interest. The public interest obligations have been satisfied, and the public has received the full benefit of the MFI program in these tracts. The time is now ripe to grant the Petition, as hereby amended.

## **I. Plateau Constructed a 4G MFI Network by the Applicable Deadline.**

The Commission authorized Plateau to receive MFI support in nine census tracts in New Mexico on June 20, 2013.<sup>2</sup> Pursuant to rule 54.1006(b), Plateau was required to demonstrate construction of a 4G network covering at least 75% of the previously unserved road miles in each census tract by June 20, 2016 (the “MFI Construction Deadline”).<sup>3</sup> By March 9, 2015, well over a year before the deadline, Plateau had completed construction of the 4G network to provide coverage to at least 75% of the previously unserved road miles in the four Completed Tracts.<sup>4</sup> By the Spring of 2015, Plateau also had completed construction of the 4G network to provide coverage to more than 50% of the previously unserved road miles in the Three Tracts, with two of these tracts close to 75% coverage.

On May 20, 2015, however, Plateau and its affiliates, including New Mexico RSA 4 East Limited Partnership, from whom Plateau leased spectrum, assigned their mobile systems and mobile spectrum to New Cingular Wireless PCS, LLC (“AT&T”) (“AT&T Assignment”), following FCC approval of the transaction.<sup>5</sup> In anticipation of the AT&T Assignment, Plateau submitted the Petition because with the consummation of the transaction, Plateau no longer

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<sup>2</sup> See *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, Public Notice, AU Docket No. 12-25, DA 12-1566, 27 FCC Rcd 12031 (2012) (“*Winning Bidder PN*”); see also *Mobility Fund Phase I Support Authorized For 39 Bids; Defaults On Four Auction 901 Winning Bids Determined*, Public Notice, DA 13-1412, 28 FCC Rcd 8934 (2013) (“*Plateau MFI Award PN*”).

<sup>3</sup> See 47 C.F.R. §54.1006(b). The end of the three-year period following the award of MFI support to Plateau was June 19, 2016, which fell on a Sunday, and accordingly, Plateau’s MFI Construction Deadline was Monday, June 20, 2016.

<sup>4</sup> Plateau completed construction of the 4G network for the census tract associated with SAC 498014 on January 20, 2014; SAC 498019 on February 16, 2015; and SACs 498013 and 498017 on March 9, 2015. See Form 690 Payment 3 Requests, Line 210, submitted by Plateau to USAC for SACs 498013, 498014, 498017, and 498019.

<sup>5</sup> See *Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership For Consent To Assign Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 14-144, FCC 15-53 (rel. May 8, 2015).

would retain access to spectrum in its MFI-awarded census tracts and no longer would provide mobile services in those areas.<sup>6</sup> As discussed below, however, since the consummation of the transaction, AT&T has continued to offer service and provide coverage in the MFI tracts over the 4G network that Plateau constructed.

## **II. Plateau Timely Submitted Drive Test Data for Two Tracts and Requests Only a Brief Extension of Time for the Submission of Drive Test Data for Two Other Tracts.**

Following the AT&T Assignment, Plateau continued to operate the mobile systems during a transitional period pursuant to a transition agreement with AT&T. During this transition period, Plateau completed drive testing and submitted drive test results to USAC for the Completed Tracts demonstrating that Plateau met and exceeded the 75% coverage requirement.<sup>7</sup> Plateau submitted the drive test results for SACs 498013 and 498014 by the June 20, 2016 MFI Construction Deadline. Plateau submitted the drive test results for SACs 498017 and 498019 on August 22, 2016, approximately two months after the MFI Construction Deadline.<sup>8</sup>

In the Waiver Amendment, Plateau requested a waiver of the June 20, 2016, MFI Construction Deadline to allow a brief extension of time for submitting drive test data. Plateau anticipated that it would need a twelve-week extension. As noted above, however, Plateau met

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<sup>6</sup> In connection with the assignment, Plateau also notified USAC that Plateau would not complete the construction of the networks in the census tracts associated with SACs 498015 and 498020. USAC assessed Plateau for the performance default on these two SACs, and Plateau timely paid the assessment. Accordingly, the Petition only pertains to seven MFI tracts rather than nine.

<sup>7</sup> Plateau constructed a network covering 88% coverage of the previously unserved road miles in SAC 498013, 93% coverage of the previously unserved road miles in SAC 498014, 88% coverage of the previously unserved road miles in SAC 498017, and 96% coverage of the previously unserved road miles in SAC 498019.

<sup>8</sup> See Form 690 Payment 3 Requests submitted by Plateau to USAC for SACs 498017 and 498019 (August 22, 2016).

the June 20, 2016, deadline for submitting drive test data for SACs 498013 and 498014, and no longer requests an extension of the deadline for these two SACs. For the reasons set-forth in the Waiver Amendment, Plateau continues to request a brief extension of the deadline to submit the drive test data for SACs 498017 and 498019, from June 20, 2016 to August 22, 2016. There is good cause for grant of this limited relief.

### **III. The Mobility Fund Phase I Public Interest Obligations Have Been Satisfied.**

#### *A. The 4G Network Has Provided Coverage Through the Five-Year Period After Plateau Was Authorized to Receive Support.*

As discussed in the 2014 Petition, Rule 54.1006 essentially sets forth three (3) public interest obligations for MFI support: (1) construction, (2) collocation, and (3) roaming.<sup>9</sup> Of these, the collocation obligations are not relevant to this situation because Plateau did not construct any new towers in the supported areas. The roaming obligations effectively continue to be satisfied because AT&T remains subject to the Commission's voice and data roaming obligations on the network that AT&T acquired from Plateau.<sup>10</sup> The remaining public interest obligation is the construction of a 4G network by the applicable deadline, which Plateau fully satisfied in the Completed Tracts.

As discussed in the 2014 Petition, MFI provided one-time support for the construction of mobile networks where such networks were lacking, but did not provide support for ongoing operations. To the extent that the eligibility and reporting requirements may imply an obligation that the MFI funded network be used to provide service for five (5) years after authorization of support, this service obligation also has been satisfied completely. The Commission authorized Plateau to receive support on June 20, 2013, and the five-year period ended on June 19, 2018. Upon the timely completion of the construction of the 4G network in the Completed Tracts,

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<sup>9</sup> See 2014 Petition at pp. 10-11.

<sup>10</sup> See *id.* at note 34.



Plateau provided mobile voice and broadband services in the Completed Tracts in rural eastern New Mexico, consistent with the performance requirements specified in Rule Section 54.1006(b).<sup>11</sup> Upon assignment of the network to AT&T, AT&T has continued to provide mobile voice and broadband services over the 4G network as constructed by Plateau in the Completed Tracts.

Plateau hereby certifies that AT&T has provided substantially the same level of coverage and services in the Completed Tracts for the duration of the five-year period. Specifically, Plateau certifies that the cell sites serving the Completed Tracts remain operational, and that AT&T offers mobile voice and mobile broadband service in the Completed Tracts at urban-comparable rates. AT&T continues to operate the 4G network that Plateau constructed, and subscribers and roamers continue to have access to mobile voice and broadband service today from AT&T on the 4G network that Plateau built in the previously unserved areas. Accordingly, the applicable MFI obligations have been fully-satisfied, the Commission has achieved the objectives of the MFI program, and the Commission and the public have received the full benefit of the MFI program as committed to by Plateau.

Although Plateau did not retain access to spectrum for the five-year period, the underlying purpose of any such spectrum access requirement is to allow for the continued provision of voice and broadband service in the MFI-supported census tract(s). As clearly set-forth herein, and in the Petition, the purpose of such requirement has been fully satisfied by the uninterrupted provision of voice and broadband services over the 4G network over the same spectrum in the Completed Tracts through June 19, 2018.

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<sup>11</sup> See 47 C.F.R. §54.1006(b).

*B. Plateau has Submitted Annual Reports and Maintained the LOCs.*

In addition to Plateau's compliance with the MFI performance requirements, Plateau also has submitted annual reports.<sup>12</sup> Pending further action by the Commission, Plateau will submit a final annual report for program year 2019, to cover to the period of January 1, 2018 through June 19, 2018, which period is the completion of the fifth year following the award of MFI support to Plateau and the final period for which reporting is required under Rule Section 54.1009.<sup>13</sup>

Plateau also has maintained the Letters of Credit ("LOCs) in support of the MFI funds for the seven tracts subject to the Petition. This has provided the Commission with assurance that service would continue to be offered in the supported areas at reasonably comparable rates pending action on the Petition, but maintaining the LOCs for over five years also has required Plateau to tie-up funds that otherwise could be used for investment in broadband networks in rural New Mexico and Texas. Plateau requests that the Commission act on the Petition so that USAC can cancel the LOCs and Plateau can utilize the collateral funds.

**IV. Plateau Requests that Repayment of Support for the Three Tracts be Netted Against the Final Support for the Completed Tracts.**

In the 2014 Petition, Plateau sought a waiver of the Commission's automatic performance default provisions for the seven MFI projects that are the subject of the Petition, including the Three Tracts where Plateau constructed a 4G network that covers greater than 50%, but less than 75%, of the previously unserved road miles. In requesting a waiver of the performance default provisions for these Three Tracts, Plateau was requesting that (1) it be permitted to retain the initial one-third disbursement of MFI support for the Three Tracts; and (2)

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<sup>12</sup> See 47 C.F.R. § 54.1009. Plateau has submitted annual reports for program years 2014, 2015, 2016, 2017, and 2018, but such reports are subject to Plateau's request that the Commission modify the reporting requirements following the AT&T Assignment. Because of the uncertainty regarding the status of the Three Tracts, Plateau has not updated the information in the reports to reflect the final coverage in those tracts.

<sup>13</sup> See 47 C.F.R. § 54.1009.

the Commission waive or cancel the additional performance default payment of ten percent of Plateau's MFI winning bid amount for these Three Tracts pursuant to Rules 54.1006(f) and 54.1007(c). By this Second Amendment, Plateau hereby modifies the relief requested.

Plateau no longer requests that it be allowed to retain the first one-third of support already disbursed for the Three Tracts. Instead, Plateau requests that the Commission allow Plateau to repay the support already disbursed for the Three Tracts by netting the repayment amount against the additional amount owed Plateau for the full support (up to the percentage of road miles covered) in the Completed Tracts.

Grant of this modified relief would result in *no additional disbursement of MFI funds to Plateau* because the amount of additional MFI support for which Plateau is eligible based on the percentage of unserved road miles covered in the Completed Tracts, is less than the initial one-third disbursement amount that Plateau will repay to USAC for the Three Tracts where Plateau did not meet the 75% coverage requirement. After crediting the additional support for which Plateau is eligible for the Completed Tracts based on road miles covered as reported in the Payment 3 Form 690s, Plateau would repay approximately \$127,000 to USAC, subject to USAC's drive test verifications of the reported road miles in the Completed Tracts. This solution is equitable and administratively efficient.

Plateau continues to request that the Commission waive or cancel the additional performance default payment under Rule 54.1006(f) with respect to all seven MFI projects, including the Three Tracts. Although Plateau did not meet the applicable 75% coverage benchmark in the Three Tracts, Plateau significantly deployed coverage to previously unserved roads in rural eastern New Mexico. In two of the Three Tracts, SACs 498016 and 498021, Plateau estimates that the 4G network it constructed provides coverage to 65% of the previously unserved road miles. In the third tract, Plateau estimates that the 4G network provides coverage

to 55%.<sup>14</sup> Accordingly, Plateau was very close to meeting the requisite 75% benchmark in at least two of the tracts and undertook meaningful efforts in all three of these tracts.

As with the Completed Tracts, Plateau certifies that AT&T continues to operate the 4G network that Plateau constructed in the Three Tracts, and subscribers and roamers continue to have access to mobile voice and broadband services today from AT&T (at urban-comparable rates) in these previously unserved areas. The objective of the MFI program has been significantly realized, and the Commission and the public have received a valuable network that allows services to be provided where they were not previously available.

With the repayment of the initial MFI support disbursed for these Three Tracts, the Commission and public will have facilitated the deployment of 4G service to these previously unserved areas without any expenditure of MFI funds. Plateau will have constructed a 4G network in the Three Tracts, without MFI funding, to cover greater than 50% of the unserved road miles there, and the public continues to benefit from this network.

It would be inequitable and unduly burdensome to impose an additional default payment on Plateau with respect to the MFI projects in these tracts. Enforcement of the default penalty is not necessary to preserve the integrity of the auction process since Plateau performed in good faith and expended its own funds to the significant benefit of the public. There is good cause for the Commission to waive the additional performance default penalty.

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<sup>14</sup> Plateau has not undertaken to drive test the Three Tracts, as it would be unduly burdensome and a waste of Plateau and USAC resources to do so since Plateau proposes to repay all of the MFI support for these tracts. Upon favorable action by the FCC on the Petition with respect to these tracts, and to the extent requested by the Commission, Plateau will provide propagation maps that demonstrate 4G coverage in the Three Tracts. *See* Waiver Amendment at p. 4.

## **V. There is Good Cause for Grant of the Requested Relief.**

Although Plateau did not maintain access to spectrum for five years after it was awarded MFI support, Plateau has substantially satisfied the MFI performance requirements for final disbursement of MFI support in the Completed Tracts. Plateau constructed a 4G network for the provision of mobile voice and broadband services in the Completed Tracts and demonstrated that the network met and exceeded the 75% coverage requirement for the Completed Tracts. Plateau also constructed a 4G network in the Three Tracts that provides significant coverage for the provision of mobile voice and broadband services to previously unserved road miles. The 4G network that Plateau constructed has allowed consumers to receive voice and broadband service for the five years after Plateau was awarded MFI support, initially from Plateau and currently from AT&T.<sup>15</sup> Subscribers and roamers have benefitted and will continue to benefit from the 4G network that Plateau built to cover these previously unserved areas. With AT&T's continued operation of the network, the Commission has achieved all of its MFI program objectives and has realized the public interest benefits of the MFI program in the Completed Tracts and has substantially realized these objectives and public interest benefits in the Three Tracts. Accordingly, there is good cause for grant of the requested relief.

For the reasons set-forth in the Petition, as amended, there is good cause to grant the requested relief. Plateau respectfully requests that the Commission act swiftly to grant the Petition so that USAC can verify the network coverage and final MFI support in the Completed Tracts, Plateau can repay USAC the difference between the final disbursement of support for the Completed Tracts and the repayment of the first one-third of support received for the Three

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<sup>15</sup> As stated in the 2014 Petition, the negative change in Plateau's financial position, which forced the sale of Plateau's mobile wireless system, was a circumstance beyond Plateau's control. *See* 2014 Petition at p. 16.

Tracts, and USAC can terminate the LOCs so that Plateau can utilize the collateral funds for other investments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Whiteaker', enclosed within a thin black rectangular border.

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November 13, 2018

### **Declaration of David J. Robinson**

I, David J. Robinson, do hereby declare under penalty of perjury the following:

1. I am the Chief Executive Officer of Plateau Telecommunications, Incorporated.
2. I have read the foregoing Second Amendment to Petition for Waiver and Modification of Certain Commission Rules Regarding Mobility Fund Phase I Support, and the factual statements made therein are true and accurate to the best of my knowledge, information and belief.



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